IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 771 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL KALABHAI GOPALDAS
Versus
STATE OF GUJARAT

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Appearance :
MR MB GANDHI for Appellant.
MS FALGUNI PATEL, ADDL. PUBLIC PROSECUTOR for Respondent.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 18/10/2007

C.A.V. JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

This appeal is preferred under section 374 (2) of the Criminal Procedure Code against the judgment and order dated 01.05.07 passed by the learned Additional Sessions Judge, Gandhinagar in Sessions Case No. 23 of 2007 by which the learned trial Judge has convicted the present appellant under section 376 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 10 years and fine of Rs.25,000/-, in default, further simple imprisonment of 6 months.

Short facts giving rise to the present appeal are stated hereinbelow:

The victim, as per the prosecution case, was residing at Delvada village, Mansa Taluka along with her family. On the date of the accident, i.e. 25.08.06, the victim went to the field of Patel Ramabhai Kalabhai to fetch grass. The field of the appellant was situated near the field of Patel Ramabhai Kalabhai. As the victim was alone in the evening, the appellant caught hold of the victim and committed rape on her against her will and desire. The complaint was filed by the victim on 25.08.06 itself to the Senior Police Sub-Inspector, Mansa Police Station, who registered the offence against the accused. On the strength of the complaint given by the victim, the place where the incident had taken place was visited by the Investigating Officer and the panchnama with regard to the place of the accident was prepared in the presence of panch witnesses. He also

recorded the statement of the witnesses from the neighbourhood. The muddamal articles which were seized during the course of investigation were sent to the Forensic Science Laboratory for the purpose of detailed analysis. The victim as well as the appellant were sent for medical examination. The accused was arrested during the course of investigation. On receipt of report from the Forensic Science Laboratory, medical certificate and other materials, the appellant wascharge sheeted and produced before the Judicial Magistrate, First Class, at Mansa, who in turn committed the case to the Sessions Court at Gandhingaar under section 209 of the Criminal Procedure Code as the case was exclusively triable by the Sessions Court. Charge against the appellant was framed, vide Exh.3, and the appellant pleaded not guilty to the charge levelled against him. The matter was thereafter set down for full-fledged trial before the Sessions Court.

The prosecution examined the following witnesses in order to prove the guilt of the accused:

Sl.No.	P.W. No.	Name	Exh.No.
1	P.W. No.1,	Dr. Jitesh Deepakbhai	Exh. 5
2	P.W. No.2	Jivuben Amarsinh	Exh.12
3	P.W. No.3	Pravinsinh Hamirji	Exh.13
4	P.W. No.4	Lalabhai Kanjibhai	Exh.14
5	P.W. No.5	Purshottambhai Mohanbhai	Exh.16
6	P.W. No.6	Yogeshkumar Kantilal	Exh.24
7	P.W. NO.7	Kantibhai Ambalal	Exh.26
8	P.W. No.8	Vinubhai Ranchhodbhai	Exh.27

The prosecution has also placed reliance on the

following documentary evidence:

Sl. No.	Description	Exh. No.
1.	Yadi to examine the victim	Exh.6
2.	The case papers pertaining to examination of the victim given by the Civil Hospital, Mansa,	Exh.7
3.	The certificate issued in favour of the victim	Exh.8
4.	Yadi to examine the accused	Exh. 9
5.	Certificate issued in favour of the accused	Exh.10
6.	Statement given by the accused	Exh.11
7.	Panchnama of the place of the incident	Exh.15
8.	Complaint filed by the accused	Exh.17
9.	Panchnama with regard to seizure of the clothes put on by the accused.	Exh.18
10.	Note sent to the Forensic Science Laboratory	Exh.19
11.	Receipt given by Forensic Science Laboratory	Exh.20
12.	Letter written by Forensic Science Laboratory to Mansa Police Station	Exh.21
13.	Report of the analysis	Exh.22
14.	Report of the serological analysis	Exh.23
15.	Panchnama with regard seizure of clothes put on by the victim	Exh.28

At the conclusion of the trial, further statement of the appellant was recorded by the learned trial Judge and the accused, in the further statement, submitted that he was falsely implicated in the case and a false case was foisted on him.

The learned trial Judge, after going through the entire gamut of oral deposition and documentary evidence, held that the appellant had committed rape on the victim against her will and desire, and thereby committed an offence punishable under section 376 of the Indian Penal Code. The learned Judge further held that the compliant filed by the victim, Exh.17, is supported by other evidence on record of the case, and, therefore, the prosecution has proved the involvement of the appellant in the commission of the offence. The learned Judge held that although the victim has turned hostile in her deposition at Exh.12, the other supporting evidence produced by the prosecution clearly established the involvement of the appellant in the commission of offence, and, therefore, the learned Judge convicted the appellant under section 376 of the Indian Penal Code and imposed sentence of rigorous imprisonment for 10 years and fine of Rs.25,000/-, in default, further simple imprisonment of 6 months.

Learned advocate Mr. M.B. Gandhi, appearing on behalf of the appellant, submitted that from a bare perusal of the deposition adduced by the victim, vide Exh.12, it becomes clear that she had not given the complaint against the accused and her thumb impression was taken by some unknown person on a sheet of paper. She has also denied the story of rape as alleged by the prosecution. Learned advocate submitted that when the victim has turned hostile, the complaint given by her, vide Ex.17, does not get necessary support or corroboration as required to establish guilt against the

accused. Mr. Gandhi placed further reliance on the deposition given by Dr. Jitesh Deepakbhai, PW.1, Exh.5 and submitted that the Doctor has deposed in his testimony that the victim give her consent for intercourse and the appellant was not at all involved in the rape as alleged by the prosecution. The appellant, in view of the deposition given by the Doctor, has not committed rape on the victim without her consent or desire. Even the report submitted the Forensic Science Laboratory, vide Exh.22, does not support the prosecution case indicating the involvement of the appellant in the commission of the offence. The learned advocate submitted that Pravinsinh Hamirji, PW.3, Exh.13, has deposed in his testimony that when he went to Bhilodra for service on 25.08.06, he was told by the victim that the appellant had committed rape on her against her will and desire and she wanted to lodge a complaint in the police station. When the complaint was given by the victim, he never accompanied her. This raises a doubt since the victim has narrated the story to an unknown person with regard to rape. At the conclusion of the trial a closing purshis was given, vide Exh.30, in which it has been stated that the victim and the opposite party had settled the matter amicably. This fact also further proves that no rape was committed by the appellant on the victim. In view of the evidence adduced by the prosecution, the learned advocate for the appellant submitted that the entire link connecting the appellant with the commission of the offence has not been established. The prosecution is required to adduce cogent and convincing evidence in order to indicate involvement of the appellant in the commission of the crime. If the chain connecting the appellant with the

commission of the crime is not established conclusively by the prosecution, then the benefit of the same is required to be given to the appellant. Thus, the learned advocate submitted that considering the evidence on record of the case, the appellant be acquitted forthwith in the matter.

Ms. Falguni Patel, learned Additional Public Prosecutor representing the State submitted that the complaint given by the victim, vide Exh.17, is supported by other evidence on record of the case to establish the involvement of the appellant in the commission of crime, and, therefore, the learned trial Judge has rightly convicted the appellant for the offence punishable under section 376 of the Indian Penal Code. Learned Additional Public Prosecutor further submitted that even medical evidence and the report of the Forensic Science Laboratory further corroborate the complaint given by the victim, and, therefore, the learned trial Judge has rightly passed the order of conviction of the appellant in the crime. Learned Additional Public Prosecutor also placed reliance on the reasonings given by the learned trial Judge and submitted that considering the situation in which the victim was placed at the time of giving deposition in the Court, she had not disclosed the true facts before the Court, but the complaint given by the victim has been proved by the investigating officer and, therefore, the complaint given by the victim was rightly considered by the learned trial Judge along with other evidence on record of the case and convicted the appellant. Thus, the learned Additional Public Prosecutor submitted that the order passed by the learned trial Judge convicting the appellant under section 376 of

Indian Penal Code and imposing the sentence does not call for any interference and the appeal deserves to be dismissed.

We have heard learned advocate Mr. M.B. Gandhi and learned Additional Public Prosecutor Ms. Falguni Patel at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

The appellant is charged for the offence punishable under section 376 of the Indian Penal Code. In order to prove the case against the appellant, the prosecution has examined the victim, PW. 2, at Exh.12. She has, during the course of her deposition, turned hostile and not supported the prosecution case. As per her deposition, when she was returning to her home after completing her work on the date of the incident, some unknown person had approached her and her thumb impression was taken on the writing. The complaint, as per the prosecution case, is produced, vide Exh. 17. On perusal of the complaint, the victim has narrated as to how the appellant had committed rape on her on 25.08.06 but the version given in the complaint is not supported by her own deposition, vide Exh.12. Dr. Jitesh Deepakbhai, PW. No.1, is examined vide Exh.5. If we peruse the deposition adduced by Dr. Jitesh, he has deposed in his testimony that on 25.08.06, as per the say of the victim, the appellant had committed intercourse with her, with her consent and no force or coercion was used by the appellant. We have also perused the certificate given by the Referral Hospital, Mansa to

the victim, but nothing turns out from the certificate issued by the Referral Hospital, which, in our view, connect the appellant with the commission of offence. Likewise, the appellant was examined and the certificate issued by the Medical Officer of the Referral Hospital, Mansa is produced vide Exh.10. This certificate does not help the prosecution case in any manner whatsoever to indicate involvement of the appellant in the commission of the offence. The panchnama of the place of incident and the panchnama of the clothes seized from the victim as well as the appellant is a corroborative piece of evidence, but since the victim herself has turned hostile and not supported the prosecution case, this evidence becomes weak in indicating involvement of the appellant in the commission of offence. The FSL report produced, Exh. 23, does not corroborate the prosecution story with regard to involvement of the appellant in the commission of offence. Thus, on the perusal of the entire evidence on record of the case, we feel that there are so many chinks in the armour of the prosecution case. The victim herself has deposed in her testimony that the complaint was not given by her, and her thumb impression was taken on a paper. Even the other oral depositions and documentary evidence do not inspire our confidence so as to uphold the order of conviction passed by the learned trial Judge. When the prosecution has failed to establish the entire link connecting the appellant with the commission of the offence, then it would be hazardous to convict the appellant for the offence punishable under section 376 of Indian Penal Code. It is incumbent upon the prosecution to adduce cogent and convincing evidence to establish the guilt of the appellant.

For the foregoing reasons, the appeal is allowed. The the judgment and order dated 01.05.2007 passed by the learned Additional Sessions Judge, Gandhinagar in Sessions Case No. 23 of 2007 is quashed and set aside. The appellant is ordered to be set at liberty forthwith, if he is not required in any other case. Fine, if paid, is ordered to be refunded to the appellant. Muddamal articles be disposed of in terms of the order passed by the trial Court.

[ANIL R. DAVE, J.]

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[H.B.ANTANI, J.]